

ORDINANCE NUMBER 19402-10-2010

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF FORT WORTH, BY AMENDING ARTICLE II OF CHAPTER 15, "GAS" ENTITLED, "GAS DRILLING AND PRODUCTION," REGULATING THE DRILLING AND PRODUCTION OF GAS WELLS WITHIN THE CITY TO AMEND SEC. 15-39, "SUSPENSION OR REVOCATION OF GAS WELL PERMIT; ISSUANCE OF A CITATION, EFFECT" TO ALLOW THE GAS INSPECTOR TO SUSPEND OR REVOKE THE GAS WELL PERMIT OR ISSUE A CITATION WITHOUT A TEN DAY NOTICE TO CURE; TO AMEND SECTION 15-31, "DEFINITIONS" TO REVISE THE DEFINITION OF "PRIVATE RESIDENTIAL AREAS" AND TO AMEND SEC. 15-36, "GAS WELL PERMITTING PROCEDURE" TO REQUIRE A BILINGUAL WAIVER FORM AND AN EXHIBIT; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION

WHEREAS, on December 11, 2001, the City Council adopted Ordinance Number 14880 regulating gas drilling within the city limits of Fort Worth; and

WHEREAS, in 2006, the City Council appointed a task force composed of gas industry, developers and neighborhood representatives to study revisions to the Gas Drilling Ordinance that would improve the quality of life for those citizens working and living near the drilling sites; and

WHEREAS, in June of 2006, the City Council amended the Gas Drilling Ordinance for the drilling, production and re-drilling of gas so that these activities may be conducted in a manner that protects the public health and welfare of the citizens of Fort Worth, conforms with established codes and regulations while minimizing the potential impact to surface property and of mineral rights owners; and

WHEREAS, in 2008, the City Council appointed a third task force of gas industry, developer and neighborhood representatives to study revisions to the Gas Drilling Ordinance, including revisions to the current regulations for compressors, noise, public notice, Protected Use definitions, setbacks, roads, and other revisions that will improve the quality of life while allowing the continued access to the minerals; and

WHEREAS, in December, 2008, the City Council adopted Ordinance Numbers 18399-12-2008 and 18412-12-2008 amending the Gas Drilling Ordinance to include revisions for new environmental provisions to reduce emissions from wells and trucks, new salt water piping standards, noise management plans; compressor setback and noise standards, pipeline routes, the creation of a gas drilling review committee; the establishment of landscaping deadlines, the creation of permitting and regulations for fracture ponds and a requirement for surface reclamation plans; and

WHEREAS, the regulations adopted in 2008 contained provisions that required a 10-day notice to operators to cure violations before a citation or other unless the failure presents a violation of the noise provisions, a risk of imminent destruction of property or injury to persons or unless the failure involves the Operator's failure to provide periodic reports as required by the Ordinance; and

WHEREAS, the current definition of "Private Residential Area" only includes those properties that are zoned and used as single or multi-family residential and excludes adjacent properties that are vacant but are zoned as single or multi-family residential; and

WHEREAS, the gas drilling regulations do not require that the waiver required to be signed by owners of protected use properties be written in both English and Spanish or that an exhibit be attached showing the setback to the protected use; and

WHEREAS, it is advisable to amend the existing gas drilling regulations to allow the Gas Inspector to cure ordinance violations without the 10-day notice to cure period; and

WHEREAS, it is advisable to revise the definition of "Private Residential Area" to include adjacent vacant properties zoned as single or multi-family residential so that their owners may be provided notice of proposed gas pipelines traversing their property for review by the City's Gas Drilling Review Committee; and

WHEREAS, it is advisable to revise the format of the waiver form to include both English and Spanish translations and to include an attachment that depicts the location of the protected use that is the subject of the waiver and closest distance that a well could be permitted to the protected use on an aerial photo;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS:

SECTION 1.

Section 15-39, "Suspension or Revocation of Gas Well Permit; Issuance of a Citation, Effect" of Article II, "Gas Drilling and Production" of Chapter 15 "Gas" is hereby amended by deleting Paragraphs A and B in their entirety and replacing Paragraphs A and B with Paragraph A below and to renumber the subsequent paragraphs sequentially.

- A. The Gas Inspector may suspend or revoke the Gas Well Permit or issue a citation pursuant to the provisions of this Ordinance. If the Operator is in compliance with the approved noise management plan of Section 15-42.B, "Noise" and a violation still occurs, the Operator will be given twenty-four (24) hours from notice of non-compliance to correct the violation from an identified source before a citation is issued. Additional extensions of the twenty-

four (24) hour period may be granted in the event that the source of the violation can not be identified after reasonable diligence by the Operator.

SECTION 2.

Section 15-31, “Definitions” of Article II, “Gas Drilling and Production” of Chapter 15 “Gas”, is hereby amended to revise the definition in Subsection WW. entitled “Private Residential Area” to read as follows:

WW. *Private Residential Area* means any area within the territorial limits of the City that is zoned and used as single or multi-family residential; or vacant residentially-zoned lot that is adjacent to properties that are zoned and used as single or multi-family residential.

SECTION 3.

Section 15-36. “Gas Well Permitting Procedure”, Paragraph D, 1 of Article II, “Gas Drilling and Production” of Chapter 15 “Gas”, is hereby amended to require waivers to be in both Spanish and English and to attach an exhibit to read as follows:

D. Permitting Procedure for a Waiver from Protected Use Property Owners.

1. No application for a Gas Well permit within six hundred (600) feet of a Protected Use by Waiver of Protected Uses shall be accepted unless the written notarized waivers are obtained from all Protected Use Property Owners within six hundred (600) feet of the proposed well site.
 - a. Waivers must be in a format approved by the City and shall include an aerial exhibit attached clearly depicting the area of a proposed pad site where well development could occur and the closest dimension to the protected use for which the waiver is being requested. Signatures are required on both the form and exhibit. The waiver form will be double sided and printed in both Spanish and English allowing the property owner to execute the waiver in their language of choice.
 - b. Written notarized waivers granted by the all the Protected Use Property Owners within a six hundred (600) foot radius around the proposed well or boundary of Multiple Well Site must be filed, at the expense of the Operator, in the applicable county

records. All waivers must identify the property address, block and lot number, subdivision name and plat volume and page number. Copies of filed Protected Use Property Owner waivers must be submitted with the filing of a completed application for a Gas Well permit within six hundred (600) feet of a Protected Use.

2. If the Operator fails to obtain written waivers from all Property Owners within a six hundred (600) foot radius around the proposed well, or boundary of Multiple Well Site the Operator must submit a request for a waiver to drill a Gas Well within six hundred (600) feet of a Protected Use from City Council pursuant to the requirements of Subsection C of this Section or modify the well location to comply with the six hundred (600) foot setback from all Protected Uses. Waivers from new Protected Use Property Owners shall not be required for an approved or existing Multiple Well Site Permit.”

SECTION 4.

That this ordinance shall be cumulative of all other ordinances of the City of Fort Worth and shall not repeal any of the provisions of such ordinances, except in those instances where provisions of such ordinances are in direct conflict with the provisions of this ordinance.

SECTION 5.

That all rights or remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the City Code, or any amendments thereto that have accrued at the time of the effective date of this ordinance; and as to such accrued violations, and all pending litigation, both civil or criminal, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 6.

That it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared void, ineffective or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such voidness, ineffectiveness or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation herein of any such void, ineffective or unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 7.

That any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Two Thousand Dollars (\$2000.00) for each offense. Each day that a violation exists shall constitute a separate offense.

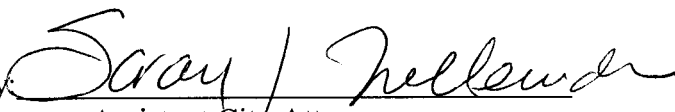
SECTION 8.

That the City Secretary of the City of Fort Worth, Texas is hereby directed to publish this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by V.T.C.A. Local Government Code Subsection 52.013.

SECTION 9.

This ordinance shall take effect after adoption and publication as required by law.

APPROVED AS TO FORM AND LEGALITY:

By: 
Assistant City Attorney

Adopted: October 12, 2010

Effective: October 16, 2010

City of Fort Worth, Texas
Mayor and Council Communication

COUNCIL ACTION: Approved on 10/12/2010 - Ord. No. 19402-10-2010

DATE: Tuesday, October 12, 2010

REFERENCE NO.: G-17021(Revised)

LOG NAME: 06GAS DRILLING ORDINANCE REVISE-R

SUBJECT:

Adopt the Ordinance Amending Article II of Chapter 15 of the City Code, to Amend Section 15-39 Allowing the Gas Inspector to Suspend or Revoke a Gas Well Permit or Issue Citations on Gas Drilling Permit Violations without a 10-Day Cure Period, Revise the Definition of a Private Residential Area and Require that all Waivers Include a Boundary Area Exhibit and be Bilingual

RECOMMENDATION:

It is recommended that the City Council adopt the attached ordinance amending Article II of Chapter 15 of the City Code, to amend Section 15-39 allowing the Gas Inspector to suspend or revoke a gas well permit or issue citations on gas drilling permit violations without a 10-day cure period, revise the definition of a Private Residential Area and require that all waivers include a boundary area exhibit and be bilingual.

DISCUSSION:

On December 9, 2008, (M&C G-16391) and December 16, 2008, (M&C G-16407 the City Council adopted Ordinances 18399 and 18412, respectively, to amend the gas drilling regulations in Fort Worth. The two ordinances were consolidated into one on February 3, 2009 (M&C G-14639).

Citations

Section 15-39 currently requires that the Gas Inspector issue the operator a written notice allowing a 10-day period to cure any violation of the Gas Well Permit. However, if the violation is related to non-compliance with the noise management plan, risks to destruction of property or injury to persons or failure to provide required periodic reports, the citation may be issued immediately. If there are noise violations and the operator is in compliance with their noise management plan, they are allowed 24 hours to cure the violation.

The provision as it is currently written has made it difficult to enforce permit violations and to prosecute associated citations that are issued prior to the 10-day cure period. This revision will allow the Gas Inspector to enforce all provisions of a permit by citation without the need to provide a 10-day notice and cure period with the exception of 24-hours for noise violations that occur despite compliance with the noise management plan. The proposed Section A will replace Sections A and B in the current ordinance and will allow the Gas Inspector to issue citations without a 10-day cure period.

Pipelines in Private Residential Areas

Gas pipelines that are planned in Private Residential Areas require review by the Gas Drilling Review Committee (GDRC). Notice of the GDRC meeting is provided to the owners of the Private Residential Area properties. The intent of the GDRC review is to determine if all reasonable gas pipeline route alternatives have been explored to avoid residential areas if possible. Due to the current definition of

"Private Residential Area," pipelines through vacant lots in neighborhoods are not required to comply with the GDRC review process.

The proposed revision will enable both owners of vacant and developed residentially zoned properties to receive notice and provide input on proposed gas pipeline routes.

Waiver Form

The waiver form used by operators currently is provided in English only. The proposed form will provide both Spanish and English translation of the waiver language and will require an attachment that clearly shows the boundary area where well development could occur as well as a dimensioned minimum distance to the protected use considered in the waiver. The new format will further insure that protected use property owners have sufficient information to consider when considering execution of a waiver.

FISCAL INFORMATION / CERTIFICATION:

The Financial Management Services Director certifies that this action will have no material effect on City Funds.

FUND CENTERS:

TO Fund/Account/Centers

FROM Fund/Account/Centers

CERTIFICATIONS:

Submitted for City Manager's Office by:

Fernando Costa (6122)

Originating Department Head:

Susan Alanis (8180)

Additional Information Contact:

Rick Trice (7959)
